

3 JUL 1986

MEMORANDUM FOR: Associate Deputy Director of Personnel
for Employee Benefits and Services

FROM:



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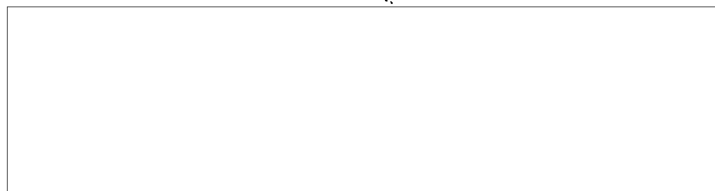
SUBJECT: Topics for Policy Consideration

Bob,

1. Per your request, here are a few suggested topics that involve policy consideration as the FERS implementation effort moves along. My comments on each topic are based upon my own research of the Act and my own non-authoritative interpretation.

2. The statutory wording in most of these topical areas is generally straight forward. Topic I, relative to the DCI's authority to administer retirement system affairs applicable to any and all Agency employees, involves two separate categories of statutory authority. One is relative to Chapter 84 in the new law (i.e., the FERS) in which I interpret as prospective and the other involves specific amendments to the existing and current Title 5 Chapter 83 law which I interpret as effective on the enactment date of the FERS Act of 1986.

3. An early authoritative interpretation of this and other complex provisions of the FERS Act will eliminate questions on these types of issues.



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Attachments:

a/s

TOPICS FOR POLICY CONSIDERATION

TOPIC I: The Director of Central Intelligence's authority to administer Federal retirement programs (FERS, CSRS, and CIARDS) as they apply to CIA employees.

REFERENCE: Subchapter VI - General and Administrative Provisions Section 8461 - Authority of the Office of Personnel Management.*

"Section 8461(j)(1) Notwithstanding any other provision of this chapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this chapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence--

"(A) determine entitlement to benefits under this chapter based on the service of employees of the Central Intelligence Agency;

"(B) maintain records relating to the service of such employees;

"(C) compute benefits under this chapter based on the service of such employees;

"(D) collect deposits to the Fund made by such employees, their spouses, their former spouses, and their survivors;

"(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

"(F) perform such other functions under this chapter (other than under subchapters III and VII of this chapter) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

"(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1).

"Section 8461(m)(1) The Director of Central Intelligence, in consultation with the Division of the Office of Personnel Management....shall by regulation prescribe appropriate procedures to carry out (j)...above;

(2) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Fund....under this chapter."

(3) The Director of Central Intelligence shall submit the regulations prescribed under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect."

Comments

The wording of the administrative authority provided the DCI in this subchapter permits the DCI discretion as to the circumstances and extent he determines it appropriate to exercise this special authority.

The substantive administrative actions taken by the DCI under this authority must be consistent with requirements and benefits, as prescribed in the Act as applicable to other Federal employees.

The DCI is not, therefore, bound to fully administer all facets of retirement systems applicable to CIA employees. The statute does not prescribe any specific dates by which the Director of Personnel Management or the DCI are to establish administrative processes or issue regulations relative to the FERS or other Federal retirement system provisions.

The Agency appears to be free to institute administrative processes and prescribe regulations in phased sequences as needed in the implementation schedule.

It can be also interpreted that the DCI can--where cover or security concerns are not involved--elect to have all or some of the retirement affairs of some CIA employees administered externally by Office of Personnel Management rather than internally within the CIA.

The Agency sought this administrative authority in the face of objections from OPM. Inclusion in the FERS Act was through the Eagleton/Durenberger amendments.

In brief, the Agency can apply the internal administrative authority for those CIA employees who are most security sensitive while deferring inclusion in non-sensitive categories.

CIA successfully argued for this authority and was strongly supported by the oversight committees. In general terms, the Agency will be expected to eventually administer substantial aspects of the retirement affairs of CIA employees or risk the eventual loss of this special authority.

- * This reference in the FERS Act applied specifically to Chapter 84 (FERS) affairs. These same provisions (wording and substance) are also found in Title II of the FERS Act amending current Chapter 83 (CSRS) Section 8347. This amendment provides the DCI with authority to administer CSRS cases under current law.

TOPIC II: FUTURE STATUS OF THE CIARDS FUND

REFERENCE: Subchapter II--Basic Annuity Sections 8422 and 8423

COMMENTS

The FERS Act established a single fund (the CSRS fund) for the FERS and the FERS-CIA. The law did not alter the status of the CIARDS fund applicable to the CIARDS and CIARDS participants. CIARDS will continue for several years to get new participants from pre-1984 hires who eventually qualify. The post-1983 employees under FERS who eventually meet the participant standards outlined in the CIARDS Act and are selected for Special FERS-CIA status will not in fact be "CIARDS" members. Employee and Agency contributions will go into the CSRS fund and benefit pay-outs will come from the CSRS fund.

The CIARDS fund will gradually degenerate as the number of CIARDS contributors drops.

The special administrative authority provided the DCI in the FERS Act permits secure handling of contributions to the fund and secure methods for benefit pay-offs from the CSRS fund.

It is worth taking a close look at the feasibility of closing out the CIARDS fund as a separate fund and incorporating it into the CSRS fund. Contributions and distributions for CIARDS participants could be handled in accord with the DCI's authorities relative to the FERS and FERS-CIA program.

Should this approach be found to be feasible and preferred, amendments to the CIARDS Act would have to be sponsored.

TOPIC III: RETIREMENT COUNSELING

REFERENCE: FERS Act Section 205 "Retirement Counseling"
amending Chapter 83 Title 5 U.S. Code as follows:

Subsection 8350 Retirement Counseling

"(a) For the purposes of this section, the term 'retirement counselor', when used with respect to an agency, means an employee of the agency who is designated by the head of the agency to furnish information on benefits under this subchapter and chapter 84 of this title and counseling services relating to such benefits to other employees of the agency.

"(b) The Director of the Office of Personnel management shall establish a training program for all retirement counselors of agencies of the Federal Government.

"(c)(1) The training program established under subsection (b)(1) of this section shall provide for comprehensive training in the provisions and administration of this subchapter and chapter 84 of this title, shall be designed to promote fully informed retirement decisions by employees and Members under this subchapter and individuals subject to chapter 84 of this title, and shall be revised as necessary to assure that the information furnished to retirement counselors of agencies under the program is current.

"(c)(2) The Director shall conduct a training session under the training program at least once every 3 months.

"(3) Once each year, each retirement counselor of an agency shall successfully complete a training session conducted under the training program."

COMMENTS

This amendment is of important interest at this time because of an immediate requirement for an authoritative interpretation of the provisions of the FERS Act to provide a foundation for the implementation tasking facing OP and the Agency.

It is probable that OPM will not be ready to begin their training program for some time. It is also probable that OPM will wait until after the FERS is fully operational.

OPM should be contacted to confirm whether they are planning to provide pre-implementation work shops or seminars on the FERS Act before we negotiate such things from Hay/Huggins on other sources.

Primary concern is to avoid running into conflicting interpretation of FERS between OPM and other sources providing these services.

TOPIC IV: DISCLOSURE OF RETURN INFORMATION
(Income Tax Returns)

REFERENCE: Section 310 Disclosure of Return Information:

(a) In General--Subsection (1) of section 6103 of the Internal Revenue Code of 1954 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end thereof the following new paragraph:

"(12) Disclosure of return information to carry out Federal Employees' Retirement System.

"(A) In General--The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

"(B) Restriction on Disclosure--The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code."

(b) Conforming Amendments

(1) Subparagraph (A) of section 6103(p)(3) of such Code is amended by striking out "(10), or (11)" and inserting in lieu thereof "(10), (11), or (12)".

(2) Paragraph (4) of section 6103(p) of such Code is amended--

(A) by striking out "(10), or (11)" in the material preceding subparagraph (A) and inserting in lieu thereof "(10), (11), Or (12)", and

(B) by striking out "(10), or (11)" in subparagraph (F)(ii) and inserting in lieu thereof "(10), (11), or (12)".

(c) Reimbursement--The Office of Personnel Management shall reimburse the costs (as determined by the Secretary of Health and Human Services) of supplying--

(1) information under section 6103(1)(12) of the Internal Revenue Code of 1954; and

(2) such other information agreed upon by the Director of the Office of Personnel Management and the Secretary of Health and Human Services, which is required in the administration of chapters 83 and 84 of title 5, United States Code.

Section 1106(b) and (c) of the Social Security Act shall apply to any reimbursement under this subsection.

COMMENTS

The Administration of the FERS internally under the DCI's statutory authority will require similar arrangements with the Social Security Administration (to handle required aspects where dual benefits entitlements are involved; adjustments of the annuity supplement for early retirees; etc.)

This may require amendment of this section of the FERS Act to provide the Commissioner of Social Security the authority to release income tax return information to the Agency.

TOPIC V: Potential impact of the Thrift Savings Plan and participation in the Agency's Voluntary Investment Plan (VIP).

REFERENCE: Subchapter III--Thrift Savings Plan

COMMENTS

The Thrift Savings Plan provides a combination of features that will make it a very attractive option to employees who are eligible and financially able to participate. Undoubtedly the availability of the Thrift Savings Plan will attract employees away from VIP participation.

The impact on the VIP should be closely monitored in 1987 to determine whether there is sufficient employee interest in continuing the Plan.